COURT OF APPEALS
DIV. II, OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. ANTHONY REEK, Appellant.	No. 41630-1-II STATEMENT OF ADDITIONAL GROUNDS PURSUANT TO RAP 10 10

I. IDENTITY OF MOVING PARTY:

COMES NOW, ANTHONY REEK, pro se counsel, and moves this court with the presentation of his Statement of Additional Grounds - pursuant to RAP 10.10.

II. STATEMENT OF CASE:

1. Procedural facts:

On November 1, 2010, a hearing was held before the honorable Judge: JAY ROOF, on defense, and State's - motions in limine. RP 4-45.

At this motion in linime hearing, defendant Anthony Reek, -- was represented by Ms. Jenice LaCross, and the State was represented by Ms. Barbra Dennis. RP 4.

Judge Jay Roof, granted the State's motion in limine number 1, through 16, except number 4 because it didn't apply. RP 4-7; CP 78-82.

Defendant Anthony Reek motion in limine was presented to the court to determine what it will grant or deny the defense counsel Ms. LaCross. Thus, Mr. Reek present minutes of the proceedings. - CP 76-77.

> THE COURT: Okay. And then the defendant's motins in limine. Ms. Dennis? RP-7.
>
> Ms. Dennis: Thank you, your Honor.
> Well, I would object to No. 1. I would agree that sub (b) and sub (e) should be excluded, but I think sub (a), (c), and (d) are appropriate areas of testimony, espcially considering that the May 10th, 2010, incident is the date of one of the counts of making a false statement to law enforcement. RP-7. So I think that if the defendant provides false names, that's absolutely relevant and crucial to the State's evidence on one of the counts. RP-7.
>
> THE COURT: I don't know what the police report said. RP-7. If it - indicates provided a false name with regard to this particular charge, it would be relevant. If it's some generic statement as to a character flaw or a comment as to character, I can see where the motion would be grounded. RP 7-8.
>
> Ms. DENNIS: Well, in summary, You Honor, the police report indicates that the defendant gave a name. he gave a complete name, social security number, and a date of birth. He indicated he had a driver's license out of state, out of Missouri. RP-8. The officer--it's not this officer; it was a different officer--who ran -- the information found a vaild license with that name out of Missouri but - the phyical decription didn't match the defendant. RP-8. And so then he -- came back to the defendant, asked him some follow-up questions. RP-8.

The defendant immediately said that he made a mistake by telling the State of Missouri that he was six foot one when in fact he was five foot seven. RP 8. At that point, the officer was suspicious of his truthfulness, took -- him out of the car and frisked him for weapons. RP 8. That's when he found - the knife. RP 8.

THE COURT: Is he charged with having a knife? RP 8.

Ms. Dennis: No. RP 8.

THE COURT: The motion in limine as to 1 (a) is granted. RP 8.

Was he then arrested because of the active warrants that are set - forth in (d)? RP 8.

Ms. Dennis: Just one moment, please. RP 8.

Well, it was simultaneous. Once he -- He was actually arrested for providing false information to a law enforcemtn officer, but the warrants that were active were also served. RP 9.

THE COURT: It's granted then as to (a), (b), (d), and (e). RP 9.

Ms. LaCross: Your Honor, if I could be heard on (c)? I would object to a general statement in testimony that, in general, Mr. Reek provides false names when contacted by police. It's a general statement. RP 9.

As applied to this particular incidence, I would also object to -- the conclusion that he provided a false name. RP 9. That's, I believe, an element for the jury to find and not for the officer to make that conclusion. RP 9. I think it would be sufficient that it's just testimony that he provided what name he did provide and what the officer discovered. RP 9. But to conclude that he provided a false name is having the officer -- You know, to allow him to testfy to that is having the officer basically step in to the province of the jury. RP 9.

THE COURT: I had attempted to indicate that a generic statement -- would not be permitted,

but it would not preclude th officer indicating what was done and said. RP 9. And the jury will make that conclusion. RP 9. You're right about that. RP 9. But the concept about a false name, the State will be -- permitted to introduce the evidence it has to address that charge. RP 10.

Ms. LaCross: So the officer is allowed? RP 10. Because I object to the officer being able to even use the word "false" on the stand. RP 10.

THE COURT: I think you can get there with out using the word "false." That's fine. RP 10. Number 2 (a) through (f)? RP 10.

Ms. Dennis: Well, Your Honor, I would agree to (e), and that's it RP 10. I think that the rest of that information is appropriate. RP 10. (A), I don't think that that would be coming in through the officer, - but that's testimony that would be coming in through the loss prevention person. (B) is a fact. RP 10.

THE COURT: Is there any previous frauds? Are they in any of the - crimial history. RP 10.

Ms. Dennis: Well, Your Honor, I would agree to (e), and that's - Ms. Dennis: No. But the Court will hear from the loss prevention offi-
Ms. Dennis: NO. But the Court will hear from the loss prevention officer that there was an incident some months before the burglary, the August 17th date, that caught his attention and that began his investigation and surveillance of different activity that this defendant was doing and multiple returns that he was presenting to customer service, and that is why loss prevention began to investigate him. RP 10. I don't think that the loss prevention officer will I don't think we're going to get to the conclusion that there were frauds committed, -- but certainly his suspicions should be allowed. RP 11.

THE COURT: Anything else, Ms. LaCross? RP 11.

Ms. LaCross: Regarding that, I don't think it's relevant or necessary for the loss prevention officer to testify, you know, why Mr. Reek came to his attention. RP 11. We have certain incidences here that, on certain dates, Mr. Reek is alleged to have committed certain crimes, - and testimony from the loss prevention officer will be relevant to what occurred on those days. RP 11.

Why the loss prevention officer was watching Mr. Reek is not relevant and would be prejudicial to Mr. Reek. The conclusion that You know, to be able to testify that Mr. Reek was committing frauds at his - store, basically, prior bad acts, the State has not stated that they - will submit those. RP 11. I would ask that that not be admitted. RP 11 And the only thing that the loss prevention officer can testify to is what occurred on the days of the burg twos that are alleged that he's being charged with and the criminal trespass for those days that he's being charged with. RP 11. Any other days is not relevant to what occrred on those days. RP 11.

THE COURT: It doesn't appear that it would be relevant unless there's some common scheme or plan or something of that nature. If there are stand-alone incidents, then they stand alone. RP 11-12.

Ms. Dennis: Well, I would submit that they're of a common scheme, Your Honor. Obviously, the defendant is not charged with more crimes. - Well, there are actually a couple of different dates that he's charged with crimes, misdemeanor crimes: August 5th and August 13th. But I think it's important for the jury to get a full picture to see, you know, the totality of the circumstances. There are other dates when the defendant was present in Walmart, and we have video to that effect, we have testimony from the loss prevention officer to that effect, as to the -- history of this defendant presenting returns to the cusomer service. RP 12. I think that that's appropriate to admit. RP 12.

Ms. LaCross: Your Honor, that -- RP 12.

Ms. Dennis: There's not a conclusion being made that they're fraudulent activity. It's the history of this defedant's activity in Walmart. RP 12.

Ms. LaCross: Which would be, as we stand right now, one charge. RP 12. And the legal action you take --RP 12.

THE COURT: The motion is granted. RP 12.

Ms. LaCross: Thank YOu. RP 12.

Ms. Dennis: There's not a conclusion being made that they're fraduent activity. It's the history of this defendant's activity in Walmart. RP 12.

Ms. LaCross: Which would be, as we stand right now, one charge. RP12.
Ms. Dennis: And, I 'am sorry, so what -- RP 12.

THE COURT: What he did in terms of refunds or that sort of thing. RP 12. They may have been suspicious and the suspicion turns out, according to you, to be well founded and that's the basis of there charges, but it's more prejudicial than probative to know that he returned or refunded or whatever the term is. RP 13.

Ms. LaCross: No-receipt refund. RP 13.

THE COURT: They're enough I mean, there are eleven charge as is. RP 13. They will stand on their own. RP 13. Certainly it's appropriate for them to describe the manner in which somebody left the store. It's certainly...RP 13. With Missouri, a record in Missouri, what does that

mean? RP 13.

Ms. Dennis: A driver's license. That's all. RP 13.

THE COURT: And that's the basis upon which the misleading statement is going to be proven or alleged? RP 13.

Ms. Dennis: Can I just have a minute? RP 13.

THE COURT: Sure. RP 13.

Ms. Dennis: You Honor, it's not -- The defendant's false name that he provided is the one that has a valid license out of Missouri. RP 13.

THE COURT: Okay. Then that will stay. RP 13. Fake IDs, what's the situation with that? RP 13.

Ms. Dennis: Your Honor, that's the basis of the counts of forgery. So, absolutely, that should be admissible. RP 13.

Ms. LaCross: And I would object, again, to the conclusory statement that they're fake IDs. I think that's something that is an element of the crime and that needs to be for the jury to determine, whether they were fake IDs or not. RP 14. It's not for an officer to testify. RP 14.

Ms. Dennis: I can instruct my witness not to use the word "fake." RP 14.

2. Facts Relevant to Grounds:

The reasons for motions in limine and their hearings, is to exclude prejudicial evidence pursuant to Evidence Rules, and - Judicial Ruling, to create a fairness in the judicial process at trial, and with in the meaning of the Washington State Constitution, as well as the United States Constitution.

Here, Mr. Reek present facts from the trial records below, that immediately after the motions in limine hearing, the State immediately violated the Judge ruling to not mention the word

"FAKE ID", FAKE IDS", "FAKE IDENTIFICATION", and "FALSE NAME"

November 1, 2010 TRIAL OF ANTHONY J. REEK

On November 1, 2010, before the Honorable Jay Roof, Judge of the Kitsap County Superior, during cross examination of defendant Anthony J. Reek, deputy prosecutor, Brabra Dennis asked the following questions:

> Ms. Dennis: "What did you say when you
> Ms. Dennis: "And at what point did you say that you had made your **"fake IDs?"** RP 45.
>
> Ms. Dennis: "What did you say when you were presented with the **"fake IDs?"** RP 45.
>
> Mr. Reek: "I never said that!" RP 45.
>
> Mr. Reek: "I never said anthing about that!" RP 45.

November 2, 2010 TRIAL OF ANTHONY J. REEK

On November 2, 2010, before the Honorable Hay Roof, Judge of the Kitsap County Superior, during closing arguments of defendant Anthony J. Reek, deputy prosecutor, Brabra Dennis asked the following questions:

> Ms. Dennis: "So, ladies and gentlemen, I submit to you from 6:27 a.m. through the register 12:55 p.m at the customer service desk, we have got two counts of burglary" "Both times he entered, he didn't have permission because of the trespass notice, and he entered with the intent to commit a crime using

his false indentification?" RP 192.

Ms. Dennis statement: "The defendant, when he gives a false name, it's a material and misleading statement. So that's for Count VIII, making a false statement to a public servant when he claimed to be Brian Reek." RP 193.

Ms. Dennis statement: "And I urge you to look through everything that you have got in here because it looks like he was making effort after effort after effort to get his "fake ID" just right." RP 193.

Ms. Dennis statement: "This is a "fake identification" in the name of Anthony Garcia. And the defendant possessed it. It's a forged document. He knew it to be forged because he made it himself. And he possessed it with the intent to defraud Walmart. And we know that because he admitted that to officer Hoke." RP 193-194.

Ms. Dennis statement: "That's the other forged indentification that he possessed. It's the same thing. He knew it was forged because he made it himself. And he possessed it with the intent to defraud Walmart. And we knew that because he admitted that to the officer."RP 194. "That's Count III, Count IV." RP 194.

Ms. Dennis statement: "Counts I, II, III, and VIII are all contained on the August 17th series of facts that we have gone over before. I mean, we have got the pictures for that, we have got him present, the testimony that he presented his false ID. So he's intending to defraud Walmart. His admission that he intended to defraud Walmart. His admission that he intended to defraud Walmart. So he entered unlawfully with the intent to commit a crime. We have got all of his doctored documents that were taken from his car. RP 203.

Ms. Dennis statement: "And we have got the testimony of the the officers regarding Count VIII and IX, the making of a false statement to public servants on the two different occasions when he gave false names of Brian Reek to law enforcement. RP 203.

III. GROUNDS FOR RELIEF AND ARGUMENT:

"FIRST GROUNDS"
PROSECUTORIAL MISCONDUCT
a.) Violation of The Rules of Professional Conduct

On November 1, 2010, deputy prosecutor Barbra Dennis violated the rules of professional conduct by referring to the words -- "fake Identification", "false Name", "fake ID", and "fake IDs".

Based on these facts, the following rules that were violated do apply, and are listed for this court review, and determination.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(b) Commit a criminal act that reflects adversely on the lawyer's honestly, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influance improperly a government agency or official or to achieve results by means that violate the rules of professional conduct or other law.

(i) willfully disobey or violate a order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) violate his or her oath as attorney;

(n) engage in conduct demonstrating unfitness to practice law.

On November 1, 2010, deputy prosecuting attorney Barbra Dennis touched on the matter of "fake Ids" when she asked defendant Anthony J. Reek, "And at what point did you say that you had made your "fake Ids?" RP 45. Reference to "fake Ids" were excluded by the court just minutes before, however, the state, Barbra Dennis chosed to revisit the matter of "fake Ids", in violation of the rules of professional conduct, see 8.4(i);(k), and (n).

The state coninued the violation by asking Mr. Reek again, "What did you say when you were presented with the "fake Ids?" This demonstate that the deputy prosecuting attorney Brabra Dennis careless about the order not to refer to the word "fake Ids".

RP 14;L-6.

On November 2, 2010, during closing argument, deputy prosecuting attorney Barbra Dennis stated to the jury the following she that was excluded by the court, and the state knew to be untrue. First, the state in formed the jury that: "He knew it was forged because he made it himself. And he possessed it with the intent - to defraud Walmart. And we know that because he admitted that to the officer." RP 194. The part, "And we know that because he admitted that to the officer." RP 194. The state knew to be untrue, because when defense asked him if defendant Reek made that statement, officer Hoke said no. See RP 97.L-12-16. This was done in was done in violation of RPC'S 8.4(b),(c),(d),and (e).

Deputy prosecuting attorney repeated at RP at 194;L 1-5. and RP 203; L 11-19. All done in violation of the rules of professional conduct as mentioned above.

a.) Contempt of Court

RCW 7.21.010 Definitions. The definitions in this section -- apply throughout this chapter:

(1) "Contempt of court" mean intentional:

(a) Disorderly , contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(2) "Punitive sanction" mean a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction imposed - for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.

On November 1, 2010, during a motions in limine hearing before the Honorable Jay Roof, judge, deputy prosecuting attorney -- Brabra Dennis, was instructed to exclude the words "fake Ids" out of her presentation to the defendant and the jury during trial. - RP 13-14;L 19-6. The court's words were "that will address that", as to the State instructing her witness not to use the word "fake" during it's presentation to the jury. See RP 13-14; L 19-6.

On November 2, 2010, during closing argument, with no regard to the court's instructions not to use the word "fake", in it's - arguments to the jury. RP 13-14. Deputy Dennis chose to use the - words "fake Ids" anyway, and violated the court's instruction and further mentioned "fake identification", with out objection by the court or his defense attorney. RP 192-193.

As stated above, deputy prosecutor Dennis, on November1, and on November 2, 2010, violated the court's instructons not to use word "fake", thus, committed contempt of court, as out lined by - Mr Reek above, and thus, this court should hold deputy prosecutor accountable, and sanction by the denying the use of the trespass notice if this case goes back for re-trial, find that the court - erred during defense half time motion to dismiss the State's Burglary charge, as sanctions.

On November 1, 2010, judge Jay Roof, instructed deputy Barbra Dennis, that she "can there without using the word "false". RP 10. L 6-7. However, and inspite of the court order, on November 2 2010, during closing arguments, deputy prosecuting attorney Barbra Dennis says to the jury. "The defendant, when he gives a false it's a material and misleading statement". RP 193. This act violated the court order, and constituted contempt of court pursuant - RCW 7.21.

Mr. Reek move this court for sanctions, and ask that the use of the testimony of the lost prevention employee be excluded, if this case goes back to trial, or in tha alternative, dismissal of the bail jumps, as sanctions.

These contempt of court actions should be considred as a matter of respect to the trial court's authority as outline in RCW 7.21, as the State had no respect for the court or Mr. Reek.

RCW 7.21.020 Sanctions Who may impose. A judge or commision-erm of the supreme court, the court of appeals, or the superior - court, a judge of a court of limited jurisdiction, and a commiss-ioner of a court of limited jurisdiction may impose a sanction -- for contempt of court under this chapter. [1998 c § 1; 1989 c 373 § 2]

This is appellant's Anthony Reek's, notice, complaint, and - probable cause, and seek review of this matter before this court.

Deputy prosecuting attorney Barbra Dennis, can be held in -- contempt for failing to obey a lawful order of the court, and it is within the sound discretion of the trial court, and the order excluding "false", "fake", and "fraudulent" were. See REKHI vs.O-LASON, 28 Wn.App. 751, 626 P2d 513 (04/03/1981); MOREMAN vs. BUT-CHER, 126 Wn.2d 36, 891 P.2d 725 (03/1995); and also ESTATES OF - SMALDINO, 151 Wn.App. 356, 212 P.3d 579 (07/2009). These cases are not on point, however, they all deal with orders of the court and it's discretions, and a party failure to comply with a lawful or-der of the court.

c.) Violations of The Defendant's Motion In Limine of November 1, 2010 By The State, Violated Mr. Reek's Constitutional Rights?

On November 1, 2010, the State, represented by Barbar Dennis informed the court she would instruct her witness not to use the word "fake", the court agreed, and instructed her to instruct her witn-ess not to use the word "fake", Saying ,"That will address that."

RP 14;L 4-6.

On November 1, 2010, the court also informed the State that it think she can get there without using the word "false". "That' fine." RP 10;L 6-7.

On November 2, 2010, deputy prosecuting attorney violated -- by referring to the words "fake id" twice; RP 45. The words "fake identification". RP 192. The words "false name". RP 193. The words 'fake identification again. RP 194. The words "fake Id." RP 193. The words "false id", and "false name." RP 203. And, once last -- time, during trial. Brian Reek is a "false name." RP 219. This -- was done in violation of of defendant's constitutional rights under the 14th Amendment, and Article 1 Section 22 of the Washington State Constitution. As Mr. Reek was deprive of his due process rights, depsite of being represented by defense counsel during -- trial who was aware of all the violations and made no objections. Such matters are reviewable in the appellate court under prosecutorial misconduct.

"SECOND GROUNDS"
a.) Whether Mr. Reek's Motion In Limine, Standing Alone, Preserves An Evidventiary Objection?

In State vs. Kelly, 102 Wn.2d 188, 685 P.2d 564 (06/1984)

On November 1st, and 2nd, 2010, the State, violated defense motion in limine, and court standing order not to use the words -

"fake", and "false" during it's presentation of the case to the - jury, because of it prejudicial value out weight it's probative - value, as agrued by defense and determined by the trial court. However, the State violated the trial court's orders not to use these words, but the State did, through out the trial, with not - one objection from defense counsel LaCross.

When defense counsel fails to object at the time the State - violate orders of the trial, as the result of a motion in limine, does a motion in limine, standing alone, preserves an evidentiary objection? Here, Anthony Reek object to the State's violation of the trial court orders to exclude the words "fake", and "false", and it's use during trial. Thus, Mr. Reek ask this court to consider this argument.

In State vs. Kelly:

The State contends defense counsels motion in limine was in sufficient to preserve for appeal the issue of admissibility of - of the rebuttal evidence. we do not agree. There is some conflict in the Court of Appeals as to whether a motion in limine, standing alone, preserves an evidentiary objection. Compare State v. -- Austin, 34 Wn. App. 625, 662 P.2d 872, aff'd on other grounds sub nom. State vs. Koloske, 100 Wn.2d 889, 676 P.2d 456 (1984), and - State vs. Wilson, 29 Wn.App 895 (1981) (Wing on motion in limine is tentative; error is not preserved absent objection in the course of trial) with State vs. Moore, 33 Wn.App. 55, 651 P.2d 765 -

(1982) denial of defendant's motion in limine reviewable despite defendant failure to object in the course of trial) and State vs. Latham, 30 Wn.App. 776, 780 638, P.2d 592 (1981). affid on other grounds, 100 Wn.2d 59, 667 P.2 56 (1983) (disposition of some motions in limine can only be determined at trial. Other motions in limine are appropriately the subject of final ruling prior to trial). In Fenimore vs. Donald M. Drake Conslr Co, 87 Wn.2d 85, 91, 549 P.2d 483 (1976), we set forth the rules governing trial court consideration of motion in limine.

[T]he trial court should grant such a motion if it describes the evidence which is sought to be excluded with sufficient specificity to enable the trial court to determine that it is clearly inadmissible under the issues as drawn or which may develop during the trial and if the evidence is so prejudicial in it's nature - that the moving party should be spared the necessity of calling - attention to it by objecting when it is offered during the trial. See also State vs. Evano, 96 Wn.2d 119 123, 634 P.2d 845 (1981),- 649 P.2d 633 (1982). The trial court in Fenimore denied the motion in limine and directed the moving party to object as the disputed evidence was offered nothing that it's relevance could be -- determined only in the contex of trial.

In contrast to Fenimore, the trial court here was able to -- to make a determination as to the admissibility of the question - testimony prior to it's introduction at trial. The motion in lim-

ine in limine was argued after the entire defense case had been - presented, thus the trial court had an apportunity to evaluate -- precisely what defense evidence the disputed testimony would reb- ut. Defense counsel set forth the legal basis of objection to the rebuttal evidence and a complete record of the motion argument -- was made. Rather than instructing counsel to object as the evide- nce was offered, the trial judge made a final ruling on the moti- on in limine. Kelly at 192.

Under there circumstances, defense counsel was not required to lodge a subsequent objection to the rebuttal evidence at the - time of it's admission. The purpose of a motion in limine is to - dispose of legal matters so counsel will not be forced to make -- comments in the presence of the jury which might prejudice his -- presentation. State vs Evans, supra at 123. Unless the trial cou- rt indicates further objections are required when making it's ru- ling, it's decision is final, and the party losing the motion in in limine has a standing objection. State vs Kolshe. Supra. Kelly at 193.

Having concluded that the State's rebuttal evidence was imp- roperoy admitted, we must next decide whether the error was prej- udicial and hence reversible. He evidentiary error was not of co- nstitutional magnitude; therefore we must apply the rule that er- ror is prejudicial only if within reasonable probabilities, the outcome of the trial would have been materially affected had the

the error not accured. State vs. Tharp, 96 Wn.2d 591, 599, 637 -- P.2d 961 (1981); State vs. Cunningham, 93 Wn.2d 823, 831, 631 P2d 1139 (1980).

The rules of evidence strictly confine the use of a defendant's prior bad acts because such evidence has a great capacity to arouse prejudice. See ER 404, 405, 608 fed. R. evid. 405 advisory committe note. As was eloqvently expressed by Justice Jackson in Michelson vs. United States, 335 U.S. 465-76, 93 L.Ed 168, 69 SCt 213 (1948):

> The State may not show defendant's prior trouble with the -- specific acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propernsity a - probable perpetrator of the crime. The inquiry is not rejected -- because charactor is irrevelant: on the contrary it is said to -- weigh to much with the jury and to so overpersuade them as to --- prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite it admitted probative -- value is the practical experience that it's disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice. Kelly at 199.

(footnotes O mitted) Ct. State vs Saltarelli, supra. The restrictions on the use of extrinsic evidence of prior specific instances of conduct are thus a recognition of the axiom that a de-

fendant should be tried only for the offense charged State vs. -- Mack, 80 Wn.2d 19, 21 490 P.2d 1303 (1971); State vs. Emmamuel, - 42 Wn.2d 1, 253 P.2d 386 (1953). Kelly at 200.

Petitioner was on trial for the murder of her husband. She - was not on trial for yelling at her neighbors or for beating on - her own door with a shovel. The admission of evidence of these -- irrevelant prior specific bad acts of conduct could only disout - the true issues at trial. The admission of this evidence would be prejudicial and hence constitutes reasonable error. Kelly at 200.

Finally petitioner has assigned error to the trial court's - refusal to authorize funds for travel expenses of a physician who treated her after a beating by her husband. She argues that failure to provide funds deprived her of her constitutional right to a fair trial, effective assistance of counsel, and compulsory process. Kelly at 200.

THIRD GROUNDS

a.) Ineffective Assitance of Counsel Mr. Reek Was Denied Effective Assistance of Counsel

On November 1, 2010, defense counsel argued before the Honorable Jay Roof, against the State, presented by Barbra Dennis, to deny the State's use of the words "fake" and "false" during a motion in limine hearing, as defens counsel believed the use of the words "fake", and "false" highly prejudicial to the defendant Mr.

Reek, that the court agreed on several occasions through out the motion in limine hearing, that the use of the words "fake", and - "false" would be prejudicial to Mr. Reek, and instructed deputy - prosecuting attorney Barbra Dennis, not to use these words. CP 76 The trial court's exact words" "I think you can get there without using the word "false". "That's fine". RP 10. RP 13-14. The defendant, Mr. Anthony J. Reek, contends in his statement of additional grounds, this constituted in ineffective assistance of counsel.

i. Standard of Review

Every defendant in a criminal matter is guaranteed effective assistance of counsel under the Sixth Amendment to the United States Constition. In order to demonstrate that effective assistance was denied, a defendant must prove two prongs: First, that trial counsel's performance was deficient and; second, that the deficient performance prejudiced the defendant. Here, above, defense counsel argued the words "fake" and "false" were prejudicial. Strickland vs. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The court agreed with defense counsel. RP 10. However, when the State, on November 2, 2010, started violating - the motion in limine order by using the words "fake" and "false", counsel failed to object. RP 45; RP 192; 193; 194; 203; and 219.

In the instant case, Mr. Reek has met the burden of both prongs, therefore the defendant was denied effective assistance of counsel.

ii.) Defense counsel' performance was ineffective!

Court's engage in a strong presumption that representation is effective. State vs. McFarland, 127 Wn.2d 322, 335, 899 P.2d - 1251 (1995), citing State vs. Brett, 126 Wn.2d 136, 198, 892 P.2d 29 (1995). Because the presumption runs in favor of effective representation, the defendant must show in the record the absence - of legitimate strategic or tactical reasons suporting the challenged conduct by counsel. Id. at 336.

Mr. Reek, has done more than demonstrated counsel inffective conduct, but also that counsel was just going through the motions of an attorney who didn't want to be in trial above.

iii.) The defendant was prejudiced due to choices made by Trial Counsel!

The defenant must not only demonstrate that counsel's perfo- rmance was deficient, but also that the defendant was prejudiced, such that the out come of the proceeding would have been different but for the deficient representation. State vs. McFarland, 127 Wn 2d at 335, citing State vs. Thomas, 109 Wn.2d at 225-26, 743 P.2d 816 (1987). Defense counsel argued not to allow the state to use "fake" and "false" during it's presentation to the jury. RP 10-14.

When the State disregarded the court order and use the words, --- "fake" and "false" on November 2, 2010, defense counsel failed to object. RP 45; 192; 193; 194; 203; and 219, clearly demonstrated the prejudice that counsel started out trying to protact Mr. Reek from November 1, 2010 PR 10-14, allowed it to be on November 2,- 2010. RP 45; 192; 193; 194; 203; and 219. Prejudicing Mr. Reek.

CONCLUSION:

This matter should be remand back to the trial court for a new trial, or plea arrangments with the State, in the defendant's favor, or any futher this court deems justice, after proper review, and consideration.

Dated: 10/27/2011.

Anthony J. Reek, Doc #315606
WASHINGTON STATE PENITENTIARY
MINIMUM SECURITY UNIT B-9-U
1313 North 13th Ave
WALLA WALLA, WA 99362

PROOF OF SERVICE BY MAIL

1.) David C. Ponzoha, Clerk
Court of Appeals, Div. Two
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Tacoma, Wa 98402

2.) Randall Avery Sutton
Kitsap Co. Prosecutor's Office
614 Division St.
Port Orchard, Wa 98366-4614

I, ANTHONY J. REEK, certify under the penalty of perjury under the laws of the State of Washington, that I placed an original of this document and one copy, in the institutional mail system at Washington State Penitentiary, Minimum Security Unit, postage paid, and addressed to the individuals listed above. Also State and Federal Mail Box Rules do apply. See State vs. Hurt, 107 Wn. App. -- 816, 27 P.3d 1276 (2001).

Dated: 10/27/2011.

ANTHONY J. REEK, PRO SE COUNSEL